

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JEFFREY JACKSON,

Plaintiff,

Case No. 1:11-cv-54

v

HON. JANET T. NEFF

PAUL MALONEY,

Defendant.

_____ /

OPINION AND ORDER

Plaintiff, proceeding *pro se*, initiated this action on January 17, 2011 against the Honorable Paul L. Maloney. The matter was referred to the Magistrate Judge, who performed a review of the complaint pursuant to 28 U.S.C. § 1915(e)(2) and issued a Report and Recommendation (R & R) on February 7, 2011, recommending that this Court dismiss the complaint for failure to state a claim upon which relief may be granted (R & R, Dkt 5). The matter is presently before the Court on Plaintiff's objections to the Report and Recommendation (Pl. Obj., Dkt 6).¹ In accordance with 28 U.S.C. § 636(b)(1) and FED. R. CIV. P. 72(b)(3), the Court has performed de novo consideration of those portions of the Report and Recommendation to which objections have been made. The Court denies the objections and issues this Opinion and Order.

¹Plaintiff has also, without leave of the Court, filed an Amended Complaint (Dkt 7). The Sixth Circuit Court of Appeals has held "that the district courts are not to permit plaintiffs to amend a complaint in order to avoid dismissal pursuant to [§ 1915(e)(2)]." *Benson v. O'Brian*, 179 F.3d 1014, 1016 (6th Cir. 1999). Even if the Court were permitted to consider the allegations of the amended complaint, Plaintiff has failed to assert facts which, if true, would entitle Plaintiff to relief.

Plaintiff argues that the Magistrate Judge erred in finding that Judge Maloney is entitled to absolute judicial immunity (Dkt 6 at 1; Dkt 5 at 2). Plaintiff asserts that judges are not entitled to judicial immunity when their actions deprive others of constitutionally protected rights (Dkt 6 at 1). Plaintiff's objection is without merit. The Magistrate Judge properly found that Judge Maloney is entitled to "absolute judicial immunity for actions taken in his capacity as a judge" and that Judge Maloney was acting in his judicial capacity when he made the comments in question (Dkt 5 at 2).

Accordingly, this Court adopts the Magistrate Judge's Report and Recommendation as the Opinion of this Court. A Judgment will be entered consistent with this Opinion and Order. *See* FED. R. CIV. P. 58. Because this action was filed *in forma pauperis*, this Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal of this decision would not be taken in good faith. *See McGore v. Wrigglesworth*, 114 F.3d 601, 610 (6th Cir. 1997) (overruled on other grounds by *Jones v. Bock*, 549 U.S. 199, 206, 211-12 (2007)).

Therefore:

IT IS HEREBY ORDERED that the Objections (Dkt 6) are DENIED and the Report and Recommendation (Dkt 5) is APPROVED and ADOPTED as the Opinion of the Court.

IT IS FURTHER ORDERED that the Complaint (Dkt 1) is DISMISSED for the reasons stated in the Report and Recommendation.

IT IS FURTHER ORDERED that the Court certifies pursuant to 28 U.S.C. § 1915(a) that an appeal of the Judgment would not be taken in good faith.

Dated: May 27, 2011

/s/ Janet T. Neff
JANET T. NEFF
United States District Judge